

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DANNY E. CONWAY,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13707
Trial Court No. 3PA-14-01345 CI

SUMMARY DISPOSITION

No. 0272 — June 15, 2022

Appeal from the Superior Court, Third Judicial District, Palmer,
Kari Kristiansen, Judge.

Appearances: Jason A. Weiner, Jason Weiner & Associates,
P.C., Fairbanks, under contract with the Office of Public
Advocacy, Anchorage, for the Appellant. Eric A. Ringsmuth,
Assistant Attorney General, Office of Criminal Appeals,
Anchorage, and Treg R. Taylor, Attorney General, Juneau, for
the Appellee.

Before: Allard, Chief Judge, and Harbison and Terrell, Judges.

Danny E. Conway appeals the dismissal of his application for post-conviction relief as untimely.¹ It is undisputed that under AS 12.72.020(a)(3)(A), Conway had until February 7, 2014 to file his petition for post-conviction relief, and that Conway missed this deadline by three weeks. Conway asserts, however, that he

¹ We previously remanded this case because Conway's appointed counsel failed to represent Conway on the timeliness issue. *Conway v. State*, 2019 WL 1057393 (Alaska App. Mar. 6, 2019) (unpublished).

established a prima facie case that his late filing should have been excused. Based on the record before us, we disagree, and we therefore affirm the superior court’s dismissal of his application.

In his application, Conway asserted two basic reasons for why his late filing should be excused: (1) he was prevented by an agent of the State from filing in a timely manner because of deficiencies in the prison law library where he was incarcerated; and (2) his appellate attorney was ineffective for failing to inform him about the possibility of seeking post-conviction relief, and the accompanying deadline for doing so. The State moved to dismiss Conway’s post-conviction relief application as untimely, and the superior court granted the State’s motion, reasoning that Conway failed to set forth a prima facie case that his late-filing should be excused.

On appeal, Conway asserts that the superior court erred in dismissing his claim as untimely. We disagree. With respect to Conway’s first reason to excuse his late filing — that he was prevented from timely filing by an agent of the State — Conway was required to establish, *inter alia*, due diligence in presenting his application.² As the superior court wrote, however, Conway “provide[d] no evidence regarding his efforts in the full year before he sought to file his [application].” We therefore agree with the superior court that Conway failed to establish a prima facie case that he acted with due diligence.

With respect to Conway’s second reason — that his attorney was ineffective for failing to inform him about the possibility of seeking post-conviction relief, and the accompanying deadline for doing so — we have previously acknowledged

² AS 12.72.020(b)(1)(B) (providing an exception to the statute of limitations when “the applicant establishes due diligence in presenting the claim and sets out facts supported by admissible evidence establishing that the applicant . . . was physically prevented by an agent of the state from filing a timely claim”).

that “Alaska law is unsettled with regard to the question of whether an appellate attorney has a duty to inform a client of the statute of limitations governing any potential future post-conviction relief application.”³ But assuming such a duty exists, a defendant’s failure to meet a filing deadline would still only be excused if they can show that “but for the defense attorney’s unreasonable failure to consult with the defendant about [post-conviction relief], the defendant would have filed a timely [application].”⁴

As we have just explained, Conway’s affidavit provides no information about his efforts in the year before he sought to file his application. Thus, Conway failed to set forth a prima facie case that his failure to timely file was caused by his attorney’s failure to consult with him about the possibility of post-conviction relief, rather than his own lack of diligence in pursuing his claims.

The judgment of the superior court is AFFIRMED.

³ *State v. Carlson*, 440 P.3d 364, 380 (Alaska App. 2019).

⁴ *Id.* (citing *Roe v. Flores-Ortega*, 528 U.S. 470, 476-77 (2000)).